

CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE CITY OF MILWAUKEE
AND TIME WARNER CABLE OF SOUTHEASTERN WISCONSIN, L.P.

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Milwaukee (the "City"), and Time Warner Cable of Southeastern Wisconsin, L.P. ("Franchisee").

WHEREAS, Franchisee's predecessor in interest and parent Time Warner Entertainment Company L.P. ("TWE") has asked the City to renew Franchisee's nonexclusive Franchise (the "Prior Franchise") to construct, install, maintain and operate a cable television system in the City; and

WHEREAS, the City has consented, by entry into this renewal of the Prior Franchise, to the transfer of TWE's franchise to Franchisee and TWE has guaranteed Franchisee's performance under this renewal of the Prior Franchise; and

WHEREAS, the construction, installation, maintenance and operation of such a system involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within the City; and

WHEREAS, the City has reviewed TWE's performance under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications¹ of TWE, as the guarantor of Franchisee's performance hereunder, and Franchisee, as TWE's successor in interest, has determined whether Franchisee's plans for constructing, operating and maintaining its Cable System are adequate, in a full and complete public proceeding; and

WHEREAS, the City has relied on Franchisee's representations and has considered the information that Franchisee has presented to it; and

WHEREAS, based on Franchisee's representations and information, and in response to its request for renewal, the Common Council has determined that, subject to the provisions of Chapter 99 of the City Code, known as the City of Milwaukee Cable Ordinance (the "Cable Ordinance" or "Ordinance"), and the terms and conditions set forth herein, the grant of a new nonexclusive Franchise to Franchisee, to supersede the Prior Franchise, is consistent with and is in the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the City's grant of a new Franchise to Franchisee; Franchisee's promise to provide Cable Service to residents of the City pursuant to and consistent with the Cable Ordinance; the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged;

THE SIGNATORIES AGREE AS FOLLOWS:

1. DEFINITIONS.

Except as otherwise provided herein, the definitions and word usage set forth in the Cable Ordinance are incorporated herein and shall apply in this Agreement unless inconsistent with definitions in the Agreement and in that instance the definitions in this Agreement shall apply. Words not defined shall be given their normal and customary meaning. Words otherwise defined by applicable state or federal law shall be defined in accordance with such law. In addition, the following definitions shall apply:

- a. *Cable Ordinance*: The City of Milwaukee Cable Ordinance, Chapter 99 of the Milwaukee Code of Ordinances, as it may be amended from time to time.
- b. *Franchise*: The franchise granted pursuant to this Agreement.
- c. *Franchise Agreement or Agreement*: This contract and any amendments, exhibits or appendices hereto.
- d. *Franchise Area*: The entire present territorial limits of the City and any area annexed thereto during the term of the Franchise.

- e. *Franchisee*: Time Warner Cable of Southeastern Wisconsin, L.P., and its lawful and permitted successors, assigns, and transferees, however designated.
- f. *Initial System Upgrade*: An expansion of the Franchisee's Cable System to a minimum 750MHZ bandwidth capacity. In addition, the Initial System Upgrade shall meet the requirements of subsections 6-c and 6-d of this Franchise Agreement.
- g. *Prior Franchise*: The Cable Franchise Agreement between the City and Warner Amex Cable Communications Company of Milwaukee dated June 1, 1983, as amended.

2. GRANT OF AUTHORITY: LIMITS AND RESERVATIONS.

- a. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Ordinance, the City hereby grants to Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for the Franchisee to use the City's Public Rights-of-Way for any purposes other than provision of Cable Service, except to the extent other services may be provided pursuant to section 7 herein. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.
- b. *Area Served*:
 - i. The Franchise is granted for the Franchise Area defined herein.
 - ii. The Franchisee shall build its System so that it is able to provide service to all areas located within the Franchise Area except as expressly otherwise provided herein.
- c. *Term*: The Franchise and this Franchise Agreement shall extend for a term of seventeen (17) years, commencing on January 1, 2000, unless the Franchise is earlier revoked or its term shortened as provided herein or in the Cable Ordinance.
- d. *Non-Exclusivity of Grant*: In accordance with and pursuant to the Cable Ordinance, nothing in this Agreement shall affect the right of the City to grant to any other person a franchise or right to occupy the streets, public ways or public places, or any part thereof for the erection, installation, construction, reconstruction, operation, maintenance, dismantling, testing, repair or use of a Cable System within the City.

- i. In the event the City awards one or more cable television franchise(s) following the award of this Franchise, it shall notify the Franchisee in writing within thirty (30) days of the award, and if such subsequent franchise(s) incorporate provisions more favorable to the Franchisee than the provisions contained herein, the City agrees to offer those more favorable provisions to the Franchisee provided that the Franchisee agrees to any and all terms and conditions in the new franchise(s) which are more favorable to the City. Furthermore, if the Franchisee or an affiliate of the Franchisee agrees to enter into another cable television franchise(s) with another municipality in Milwaukee County or in counties contiguous to Milwaukee County subsequent to the award of this Franchise, it shall notify the City in writing within thirty (30) days of the award, and if such subsequent franchise(s) incorporates provisions more favorable to the City than the provisions herein contained, the Franchisee agrees to offer those more favorable provisions to the City provided that the City agrees to any and all terms and conditions in the new franchise(s) which are more favorable to the Franchisee.
 - ii. If either party wishes to exercise its rights to modify this Agreement under subsection d-i above, it shall give written notice to the other party within ninety (90) days of receipt of the notice required under subsection d-i above. The parties thereafter shall undertake good faith negotiations to modify this Agreement in accordance with the requirements of subsection d-i.
- e. *Franchise Agreement Subject to Other Laws:* This Franchise Agreement is subject to and shall be governed by all applicable provisions of the federal, state, and local law.
 - f. *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to exercise its governmental powers to their full extent.
 - g. *Approval and Effective Date:* This Franchise Agreement shall become effective on and after January 1, 2000. The Prior Franchise is hereby extended to December 31, 1999, and the Franchisee and TWE agree to abide by all terms and conditions set forth in the Prior Franchise until the effective date of this Franchise Agreement.

- h. *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Franchisee:
 - i. Accepts and agrees to comply with each provision of the Cable Ordinance and any appropriate amendments and modifications thereto (unless otherwise specifically provided in this Franchise Agreement) subject to applicable state and federal law; and
 - ii. Acknowledges and accepts the City's legal right to grant the Franchise and to enter into this Franchise Agreement.
- i. *Claims Related to Prior Franchise:* As of the effective date of this Franchise Agreement, the Prior Franchise is superseded and is of no further force and effect, and the City, the Franchisee and TWE, by virtue of its guarantee of Franchisee's performance hereunder, mutually release each other from any and all claims each has had, has, or may have relating to that Prior Franchise, including but not limited to Franchise Fee payments against the other under the Prior Franchise.
- j. *No Waiver:*
 - i. The failure of the City or the Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City or the Franchisee, nor to excuse the Franchisee or the City from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.
 - ii. Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.
- k. *No Recourse:* Except for equitable relief, the Franchisee shall have no recourse against the City for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Franchisee pursuant to the Franchise, this Agreement or the Cable Ordinance, whether or not such action or

non-action was required by the Franchise, this Agreement or the Ordinance, arising out of the enforcement or non-enforcement by the City of any provision or requirement of this Agreement or the Ordinance, or otherwise arising out of the Franchise, this Agreement or the Ordinance.

- L. *Construction of Franchise Agreement:* In the event of a clear conflict between the Cable Ordinance and this Agreement, the Franchisee shall so notify the City in writing and upon such notification the parties, upon request of the City, shall negotiate in good faith toward a mutually satisfactory resolution of such conflict, provided, however, that if the City makes no request or if such negotiations are unsuccessful, the provision of this Franchise Agreement shall prevail. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time.
- m. *Amendment of Franchise Agreement:* Upon the application of either the City or the Franchisee, the parties may amend this Franchise Agreement. Such amendments shall be in writing.
- n. *Franchisee Not To Interfere With City Performance of Public Works:* Nothing in this Agreement shall be in preference or hindrance to the right of the City to perform or carry on any public works or public improvements of any kind. The Franchisee expressly agrees that it shall, at its own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place, any of its property when required to do so by the City because of street or other public excavation, construction, repair, regrading or grading traffic conditions, installation of sewers, drains, water pipes, location or relocation of streets, or any type of structure or improvement by the City or any other type of improvement found by the City to be necessary to the public health, safety and welfare. The Franchisee, by performing any work at its own expense, does not waive and specifically reserves all rights under state and federal law. In the event Franchisee and other users, including utilities, of a public right-of-way are required to relocate and compensation is paid to the users of such public right-of-way, such parties shall be treated equally with respect to such compensation and the procedures set forth in § 80.32(4), Wis. Stats., shall apply with respect thereto.

3. FRANCHISE FEES.

- a. As partial consideration for the Franchise granted pursuant to this Agreement, the Franchisee shall pay to the City an amount equal to five (5) percent of the Franchisee's Gross Revenue from the operations of the Cable System within the confines of the Franchise Area.
- b. This payment shall be in addition to any other fee, tax, or payment owed to the City by the Franchisee.
- c. The Franchise Fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the City within thirty (30) days after the quarter.
- d. If any franchise payment or recomputed amount, cost or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the rate then earned by the City on its cash deposits and the Franchisee shall reimburse the City for any actual expenses and costs incurred by the City by reason of the delinquent payment(s).
- e. *Franchise Fee Computation:*
 - i. The method of computing the franchise fee shall be adjusted if:
 - (1) a court or agency of competent jurisdiction (i.e., the Wisconsin Supreme Court, United States Supreme Court or the Federal Communications Commission) rules
 - (a) that the method of computing the franchise fee, including the method of determining which elements of revenue may be contained in the definition of Gross Revenue upon which the fee is paid, is either unconstitutional or contrary to law; or
 - (b) that elements of revenue not contained within the current definition of Gross Revenue may be included within that definition for purposes of computing the franchise fee; or
 - (2) legislation is passed which either
 - (a) expands the amount of the franchise fee which can be collected by the City by increasing the percentage of Gross Revenues upon which the franchise fee is computed or by adding to the elements of Gross Revenue upon which the franchise fee is computed; or

- (b) invalidates all or some of the franchise fee or the method of computing the franchise fee.
- ii. If a franchise fee adjustment is required under subsection e-i-(1) or (2), the parties shall thereafter meet in order to negotiate a new franchise fee which falls within the appropriate constitutional, administrative and/or legislative parameters.
- iii. If the effect of the judicial, administrative and/or legislative change is to decrease the amount of the franchise fee to be paid by the Franchisee, the new fee shall be effective on the Prospective Application Date which is the date mutually agreed upon by the parties, but in no case later than one hundred twenty (120) days after the issuance of the controlling court order or pertinent administrative or legislative ruling and/or enactment. The Franchisee specifically waives its right to recover any franchise fees paid prior to the Prospective Application Date.

4. PROVISION OF CABLE SERVICE.

- a. *Availability of Cable Service:* Except as provided in subsections c and d, the Franchisee shall provide Cable Service to:
 - i. any person within the City requesting Cable Service who resides in a dwelling unit, as that term is defined in the Cable Ordinance, including, without limitation, an individual dwelling, a multiple-unit residential building, a condominium, a cooperative building, or a townhouse ("Residential Subscriber") or
 - ii. any person requesting Cable Service who occupies a commercial structure, such as an office, store, or other commercial building, within the City ("Non-Residential Subscriber").
- b. *Standard Installation:* The Franchisee shall connect to the Cable System, at no charge other than the Standard Installation charge, all persons located within one hundred seventy-five (175) feet of the closer of (a) the nearest edge of the public right-of-way, or (b) the nearest tap on Franchisee's system. Franchisee shall provide service at its Standard Installation charge for the initial 175 feet and reserves the right to charge any persons requesting Cable Service for installation costs in excess of the 175-foot Standard Installation.

- c. *Line Extension:* The Franchisee shall extend its Cable System to provide service to dwelling units not passed by Franchisee's Cable System, upon request by any Subscriber in the service area, in accordance with subsection a, within no later than ninety (90) days of the request, subject to Section 11-g. Franchisee shall extend its Cable System at no cost to the requesting Subscriber if the Franchisee's Cable System, starting at the requesting Subscriber's location, passes a density of 30 dwelling units per street mile. If the density is less than 30 dwelling units per street mile, the Franchisee may require the Subscriber to share the associated costs (time and materials plus a reasonable rate of return consistent with federal law), and the Franchisee may require payment in advance.
- d. *Hard to Construct Area:* The Franchisee's obligation to construct and/or extend its Cable System to serve Subscribers in the hard-to-construct downtown area depicted on Exhibit A ("Downtown Area") shall be as follows:
- i. The Franchisee shall extend its Cable System to provide service to dwelling units not passed by Franchisee's Cable System, upon request by any Subscriber in the service area, in accordance with subsection a, within no later than ninety (90) days of the request, or within 120 days for requests made between December 1 of each year and March 1 of the following year, subject to Section 11-g. Franchisee shall extend its Cable System at no cost to the requesting Subscriber if the Franchisee's Cable System, starting at the requesting Subscriber's location, passes a density of 75 dwelling units per street mile or 18 dwelling units per 1/4 street mile. If the density is less than 75 dwelling units per street mile or 18 dwelling units per 1/4 street mile, the Franchisee may require the Subscriber to share the associated costs (time and materials plus a reasonable rate of return consistent with federal law), and the Franchisee may require payment in advance.
 - ii. For plant extensions not covered by section i above, Franchisee shall connect to the Cable System at no charge other than the Standard Installation charge, all structures located within 300 feet of the nearest tap on Franchisee's system. If the structure is located more than 300 feet from the nearest tap, the Franchisee may charge the Person requesting these services for the cost of extending the Cable System in excess of 300 feet.

e. *Continuity of Service:*

- i. It is the right of all Subscribers in the Franchise Area to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.
- ii. The Franchisee shall ensure that all Subscribers receive continuous service. At the City's request, the Franchisee shall operate its System for a temporary period (the "Transition Period") following the termination, sale, or transfer of its Franchise as necessary to maintain service to Subscribers, and shall cooperate with the City to assure an orderly transition from it to another Franchisee. The Transition Period shall be no longer than the reasonable period required to ensure that Cable Service will be available to Subscribers, and shall not be longer than twelve (12) months, unless extended by the City for good cause. During the Transition Period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

5. CONSTRUCTION AND MAINTENANCE.

a. *Construction and Technical Standards:*

- i. The Franchisee shall comply with all of the construction and technical standards and the conditions of right-of-way occupancy set forth in the Cable Ordinance.
- ii. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Rights-of-Way, where necessary, the location shall be verified by excavation.

b. *System Tests and Inspections:*

- i. The Franchisee shall perform testing as necessary to demonstrate compliance with the requirements of the Franchise or other standards established by law or regulation. All tests shall be conducted in accordance with applicable law.
- ii. The Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be available for review by the City upon reasonable request.
- iii. If any test indicates that any part or component of the System fails to meet

applicable requirements, the Franchisee, without requirement of additional notice or request from the City, shall take corrective action and retest the locations.

- c. *Publicizing Proposed Construction Work:* The Franchisee shall make reasonable efforts to notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.
- d. *System Maintenance; Interruptions to be Minimized:* The Franchisee shall make reasonable efforts to schedule maintenance on its System so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the System.

6. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

- a. *System Characteristics:* The Franchisee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:
 - i. *Compliance with FCC Rules.* The Franchisee shall operate the Cable System in accordance with all FCC rules and regulations governing the technical performance and operating standards for such System.
 - ii. *Continuous 24-Hour Operation.* The System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components as further defined in subsection a-iv.
 - iii. *No Interference.* The System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the System, or originating outside the System wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.
 - iv. *Industry-accepted Equipment.* The System shall use equipment generally

used in high-quality, reliable, modern systems of similar design, including but not limited to backup power supplies capable of providing power to the system in the event of an electrical outage. The obligation to provide such backup power supplies shall apply to the Franchisee's headend, hubs, and fiber transport system to maintain service to Subscribers for not less than two (2) hours in the event of an electrical outage, as described above in subsection a-ii. The Franchisee shall comply with all applicable laws and regulations concerning System compatibility with Subscribers' television receivers and/or videocassette recorders.

- v. *Clear Channels.* The Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.
 - vi. *Parental Control.* The Franchisee shall ensure that means are available for Subscribers, at their option, to block out audio and video on any undesired channels on the System.
- b. *Current System:* The Franchisee is authorized and required to operate its existing System, and to provide service substantially equivalent to its existing service, within the City as of the effective date of this Agreement, until such time as the System is upgraded, as provided herein.
 - c. *Initial System Upgrade:* Prior to July 1, 2000, the Franchisee shall complete the Initial System Upgrade and shall make available to all Subscribers within the service area, a minimum of 79 analog video channels, deployment of new interactive services and equipment, high speed Internet access, digital audio services and such other advanced video and audio services and equipment which are available to other Franchisee systems, served by the same headend and adjacent to the City. Nothing herein shall prohibit Franchisee from providing Subscribers within the Service Area with advanced video and audio services, comparable to those provided to other Franchisee systems, served by the same headend and adjacent to the City.
 - d. The Initial System Upgrade shall provide at least the following capabilities:
 - i. The upgraded System shall have a minimum bandwidth of 750 MHZ on all active components and at least 1 GHz for all passive components, and a minimum Channel capacity of at least 79 Channels, downstream to all

- Subscribers. The System shall be capable of expanding Channel capacity through digital video compression or similar appropriate technology, without compromising signal or service quality or requiring significant alterations, upgrading, or reconstruction.
- ii. The System shall utilize a fiber backbone, HFC Hybrid Fiber/Coaxial design and at no place in the System shall the number of residences, businesses and other structures served by a node cause the system performance to not meet FCC technical standards set by system design parameters. There shall not be more than 1,000 residences, businesses and other structures served by a single fiber node.
 - iii. The upgraded System shall provide active two-way capability.
- e. Prior to the date construction of any upgrade is scheduled to commence, the Franchisee shall provide a detailed system design and construction plan, available for review by the City at the local office of the Franchisee, which shall include at least the following elements:
- i. Design type, trunk and feeder design, and number and location of hubs or nodes.
 - ii. Distribution system equipment to be used.
 - iii. Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber).
 - iv. Design maps.
- f. Franchisee shall provide quarterly written Initial System Upgrade status reports to the City during construction, and shall meet with representatives of the City to discuss each report as requested by the City Clerk.
- g. *Construction Performance:* All construction shall be performed in accordance with applicable provisions of all City ordinances and this Agreement, except where specifically waived in writing by the City.
- i. *Public Notification.* Prior to the beginning of any System Upgrade and periodically during each phase, the Franchisee shall make reasonable efforts to inform the public and its Subscribers about the progress of the upgrade, areas where construction crews will be working and any expected temporary interruptions to existing services which may occur.

- ii. *Delays in the System Upgrade.* The Franchisee shall not be excused from the timely performance of its obligation to complete any System Upgrade within the times specified herein, except for the following occurrences:
 - (1) Any *Force Majeure* situation, as described herein;
 - (2) Unreasonable failure or delay by the City to issue any permits or permission upon a timely request submitted by the Franchisee or its contractor representative and tender of any required permit fee;
 - (3) Delays beyond the control of the Franchisee that the Franchisee could not reasonably have anticipated regarding the availability, shipment and arrival of necessary equipment, cables, electronics or hardware, protracted underground excavation, easement availability, changes in contractors or contractor personnel, or any other valid factor agreed to by the City as fully explained and reasonably justified in writing to the City or its designee.
- iii. *Consequences of Delays.* Absent a showing of excusable delay pursuant to subsection ii(2) above, should the Franchisee be unable to demonstrate the timely completion of the Initial System Upgrade by the times specified herein, or be unable to reasonably justify any delays, then the Franchisee shall be in violation of a material provision of this Franchise Agreement and the City may, in its sole discretion, either grant the Franchisee an extension of time to complete such construction or implement any enforcement measures specified in this Agreement or the Cable Ordinance.
- h. *Technical Standards:* The Cable System shall meet or exceed all FCC technical standards.
- i. *Selection of Programs or Services:* Any change in programs or services offered shall comply with all lawful conditions and procedures contained in applicable law. The Franchisee shall provide thirty (30) days advance written notice to Subscribers and the City of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by the City or by operation of federal or state law, or is necessary due to events beyond the reasonable control of the Franchisee.
- j. *Emergency Alert System:*

- i. The Franchisee shall install and thereafter maintain an Emergency Alert System ("EAS") as required under federal law.
 - ii. The City will provide reasonable notice to the Franchisee prior to any test use of the EAS. The Franchisee shall cooperate with the City in any such test.
 - k. *Report on Advancements in Technology and Services:* After the sixth and twelfth year of this Franchise, and after having undertaken an assessment of community needs, it is the responsibility of the Franchisee to report to the City advancements in technology and services within the cable industry in light of the needs and interests of the community.
 - L. *Periodic Performance Evaluation:*
 - i. The City may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public, and announced in a newspaper of general circulation.
 - ii. Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, Franchisee compliance with the Cable Ordinance and this Agreement, customer service and complaint response, Subscriber privacy, services provided, Franchise Fees, penalties, updates in new technological and service developments, if any, and what Franchisee is developing in connection therewith, judicial and FCC filings, and line extensions.
 - iii. During the evaluation process, the Franchisee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably need to determine compliance with the Franchise and Ordinance.
 - iv. Notwithstanding the foregoing, evaluation sessions may be conducted no more than once every two (2) years.
7. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") USE.
- a. *Access Channels:*
 - i. The Franchisee shall make available to all Subscribers on the Cable System at least four (4) downstream video channels for public, educational and

governmental ("PEG") non-commercial access use. The City shall be solely responsible for allocating the four (4) channels amongst PEG Access users. In the event that the four (4) channels initially allocated to PEG Access become used to their capacity, the Franchisee shall agree to activate up to two (2) additional channels as needed for the same use and subject to the same policies. The City shall give the Franchisee at least three (3) months notice but no earlier than January 1, 2001 or the introduction by the Franchisee of additional channels beyond the minimum number specified in Section 6-d-i of the Franchise Agreement (whichever occurs first), of its need and desire, or the need and desire of its Access Manager to use the additional channel capacity. Channel capacity as used herein shall mean any Access Channel that is programmed at least ten (10) hours a day, for at least seven (7) days a week, for three (3) consecutive months. In determining capacity, a video program may be shown twice during a week. The Franchisee may request, and the City Clerk shall grant, a waiver of the requirement to add additional Access Channels for good cause. In making a determination of good cause, the City Clerk shall consider, among other factors, whether the Franchisee would have to surrender a channel that is currently in use and programmed by the Franchisee to create space for an additional PEG Access Channel. If during the term of this Franchise Agreement the six (6) PEG Access Channels referred to above are used to their capacity as defined above, the Franchisee shall meet with the City to determine a mutually agreeable method to provide additional PEG Access Channels adequate to meet the increased access demand.

- ii. The Franchisee shall have the right to change access channel assignments upon thirty (30) days notice to the City Clerk of the proposed effective date of such change. Upon notification, the Franchisee shall cooperate with the Access Manager in notifying Subscribers of the change and take other steps as are necessary to minimize the impact of the change and to limit disruption. In addition, Franchisee shall reimburse the manager of the channel that is reassigned reasonable and necessary documented costs occasioned by such transfer. Access channel assignments shall be the

same throughout the System.

- iii. The Franchisee may use any of the PEG channel capacity when they are not being used for PEG purposes, upon approval by the City Clerk. Franchisee shall submit a written request to the City Clerk for use of such channels. Approval of said request shall not be unreasonably withheld. The City Clerk may place reasonable conditions on the approval of such request, in order to ensure that channel capacity allocated for PEG use will be available, on at least six (6) months' written notice, when necessary for PEG use.
- iv. In the event Franchisee makes any change in the Cable System and related equipment and facilities or in Franchisee's signal delivery technology, which directly or indirectly substantially affect the signal quality, transmission or reception of programming on Access Channels by all Subscribers, Franchisee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of managers of Access Channels are not diminished or adversely affected by such change.

b. *Return Feed From Facilities:*

- i. The Franchisee shall provide activated upstream and downstream fiber optic links between the Franchisee's headend/distribution link and up to three (3) access production facilities designated by the City. One link shall be between the governmental access facility and the headend or distribution link. The second link shall be between the public access facility and the headend or distribution link. The third link shall be between the designated educational access site and the headend or distribution link. All links shall be completed within twelve (12) months of the effective date of the Franchise.
- ii. The Franchisee shall design, maintain and upgrade, if necessary, its Cable System connecting all remote points of origination provided during the Prior Franchise and identified in Exhibit B in such a fashion as to provide activated upstream and downstream channel capacity between the three (3) access production facilities identified in subsection b-i and the remote

points of origination.

- iii. The Franchisee shall also provide, at the direction of the City, during each year of the Franchise, activated upstream and downstream channel capacity between the three (3) access production facilities identified in subsection b-i and one (1) additional point of remote origin for Access Channels at locations within the Franchise Area as may be requested by the City Clerk. The City Clerk and the Franchisee shall work together in good faith to minimize the financial impact to Franchisee in implementing this provision. The Franchisee shall provide such activated channel capacity within one hundred twenty (120) days written request from the City Clerk.

c. *Activation of Access Channels and Return Feed Capacity:*

- i. The Franchisee shall provide, install, activate and maintain all Cable System equipment for amplification, conversion, receiving, transmitting, switching, and headend processing of signals to be used for public, educational and governmental Access Channels required by subsection a of this Agreement.
- ii. The connections required by subsections b-i, b-ii, and b-iii shall be designed and constructed to include all Cable System equipment, including but not limited to laser transmitters, modulators and processors, drops and wiring, so that each such location can send and receive signals, and, so that the facilities can each remotely and without assistance from the Franchisee or access to its headend route signals originated at that center or at other locations onto any of the Access Channels on the regular Subscriber network; and otherwise control the signals to allow for smooth breaks, transitions, insertion of station identification and other material. Franchisee shall bear the cost of acquiring all equipment necessary to meet this requirement.

d. *Grant for Access:*

- i. The Franchisee agrees to provide a "PEG Grant" in the form of a one time payment to the City that includes the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000) delivered at the time of execution of the

Franchise Agreement and an additional amount (if any) as agreed to by the parties and delivered within thirty (30) days following the execution of the Franchise Agreement. Such PEG Grant shall be used by the City, in its sole discretion, for PEG-related purposes in accordance with this Franchise Agreement and 47USC § 531.

- ii. In consideration of City's allowing the Franchisee to deliver the PEG Grant as provided above, Franchisee voluntarily agrees to limit the annual external cost pass-through attributable to the PEG Grant, under current FCC basic tier rate regulations, to a maximum of \$511,000 for any single twelve month period. Other costs incurred in complying with subsections a, b and c of this section are subject to pass-through to the extent eligible under applicable FCC rate regulations.
- iii. If the effect of a judicial, administrative and/or legislative change is to decrease or increase Franchisee's obligations under this subsection d, the new obligation shall be effective on a date mutually agreed upon by the parties (the "Prospective Application Date"), but in no case shall the prospective Application Date be later than one hundred twenty (120) days after the issuance of the controlling court order or pertinent administrative or legislative ruling and/or enactment. City and Franchisee each specifically waive any right to recover any grant payments, franchise fees or expenses of any kind or nature incurred or paid prior to the Prospective Application Date.
- e. *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated public, educational and governmental Access Channels.
- f. *Indemnification by PEG Access Programming Producers and Users:* All local producers and users of any of the PEG access facilities or channels shall agree in writing to hold harmless the Franchisee, the City, and any responsible educational institution, from any and all liability or other injury (including the reasonable cost of defending claims or litigations) arising from or in connection with failure to comply with applicable federal laws, rules, regulations or other requirements of local, state

or federal authorities; claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the Franchisee or the City; and for any other injury or damage in law or equity, which claims result from the use of a PEG access facility or channel.

g. *Cable Service to Certain Facilities:*

- i. Upon the request of the City, the Franchisee shall without charge install one (1) activated outlet with standard installations at each accredited public, charter and private school, each City office and agency, and each City-owned and City-leased facility within the Franchise Area, as shall be designated by the City from time to time.
- ii. The Franchisee shall provide Basic Service, and any equipment necessary to receive such service, free of charge to those facilities specified in subsection g-i above. At its sole discretion, the Franchisee may also provide higher levels of service to such facilities free of charge.

h. *PEG Costs and Payments Not Franchise Fees:* Franchisee agrees that it will not credit the PEG Grant and all other PEG support provided pursuant to this Section 7 against, or otherwise diminish, the Section 3-a Franchise Fee obligation to the City. The Franchisee, upon request, shall provide reasonable assistance to the City in demonstrating that the PEG Grant and all other PEG support provided pursuant to Section 7 shall not be credited against or otherwise diminish the Section 3-a Franchise Fee.

8. **INSURANCE, SURETY, AND INDEMNIFICATION.**

- a. *Insurance Required:* Throughout the term of this Agreement and such other period of time during which the Franchisee operates or is engaged in the removal of the System, the Franchisee shall, at its own cost and expense, maintain the insurance described below, together with evidence demonstrating that the premiums for said policy or policies have been paid.
- b. *Required Types and Limits:*
 - i. *Commercial General Liability Insurance.* Must be written on ISO Occurrence Form CG 00 0 1 or equivalent substitute form to cover liability arising from

promises and operations, independent contractors, products and completed operations, personal and advertising injury, contractual liability, and XCU exposures. The combined bodily injury and property damage limit shall not be less than \$1,000,000 each occurrence and annual aggregate.

- ii. *Automobile Liability Insurance.* Must be maintained in accordance with the laws of the State of Wisconsin as to the ownership, maintenance, and use of all owned, non-owned, leased, and hired vehicles. The combined bodily injury and property damage limit shall not be less than \$1,000,000 each accident.
- iii. *Workers' Compensation/Employers Liability Insurance.* Workers' Compensation insurance shall cover all employees engaged in work for the Franchisee in accordance with the laws of the State of Wisconsin. The Employers Liability insurance limit shall not be less than \$100,000 disease each employee, \$500,000 disease aggregate, and \$100,000 each accident.
- iv. *Umbrella Liability Insurance.* Shall be maintained above the primary commercial general liability, automobile liability, and employers liability policies required herein. The limit shall not be less than \$5,000,000 each occurrence and annual aggregate.

c. *Required Terms:*

- i. *Additional Insured.* The City and its officers, boards, commissions, councils, elected officials, agents, and employees must be included as additional named insured on the general and excess liability policies.
- ii. *Cancellation/non-renewal.* Each liability policy must be specifically endorsed to state that thirty (30) days written notice by registered or certified mail will be given to the City of any cancellation, intent to non-renew, or material reduction in coverages.
- iii. *Evidence of Insurance.* Prior to the effective date, the City must receive certificates of insurance documenting that the insurance required herein is in effect. Renewal certificates shall be provided to the City within ten (10) days of expiration of the current coverages.
- iv. *Waiver of Subrogation.* Franchisee waives all rights against the City, its

officers, boards, commissions, councils, elected officials, agents, and employees for recovery of damages to the extent such damage is covered under the liability policies required herein, except for claims arising out of the negligence or intentional actions of the City, its officers, boards, commissions, councils, elected officials, agents or employees.

- v. *Subcontractors.* It is the Franchisee's responsibility to require all subcontractors to maintain adequate insurance coverage.
- vi. *Primary Policies.* The Franchisee's insurance is primary to the City's insurance or any self insurance program thereof.
- vii. *Rating.* All insurers shall be authorized to do business in the State of Wisconsin and shall have an A.M. Best rating of A- (or better), Class VI (or higher), or otherwise be acceptable to the City if not rated by A.M. Best.
- viii. *Deductibles.* The Franchisee is responsible for all deductibles.
- ix. *Insurance Adjustments.* In the event of any changed circumstances (i.e., the adequacy of the present limits given the parties' actual loss experience), following the Effective Date, the City may, after consulting with the Franchisee, alter the minimum limitation of the liability insurance policy or policies required in this Section.
- d. *Liability Not Limited:* The legal liability of the Franchisee to the City and any person for any of the matters which are the subject of the liability insurance policies required by this Section including without limitation the Franchisee's indemnification obligations set forth in this Agreement, shall not be limited by such insurance policies, nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicate recovery from or payment by the Franchisee or its Guarantor.
- e. *Indemnification:*
 - i. Franchisee shall indemnify, defend and hold harmless the City, its officers, employees and agents from all damages and penalties, at all times during the term of this Franchise, as a result of or due to Franchisee's construction or operation of the System.
 - ii. In order for the City to assert its rights to be indemnified and held harmless,

the City must:

- (1) Promptly notify Franchisee of any claim or legal proceeding which gives rise to such right;
 - (2) Afford Franchisee the opportunity to participate in any compromise, settlement, resolution or disposition of such claim or proceeding;
 - (3) Fully cooperate in the defense of such claim and make available to Franchisee all such information under its control relating thereto.
- iii. In the event the City, in its sole discretion, determines that its interests cannot be represented in good faith by Franchisee, Franchisee shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in paragraph A above. These expenses shall include all out-of-pocket expenses, such as reasonable attorneys fees and costs.
- iv. Franchisee shall not be required to hold harmless and indemnify the City for any claims arising out of the negligence of the City, its officers, boards, commissions, councils, elected officials, agents or employees however designated.
- f. *No Limit of Liability:* Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of the Franchisee for damages under the Franchise.

9. PERFORMANCE GUARANTEES AND REMEDIES.

a. *Initial Performance Bond:*

- i. Upon the execution of this Agreement, Franchisee shall obtain and maintain an initial performance bond in favor of the City in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) until the completion of the Initial System Upgrade as described in Section 6-c herein and the delivery of the PEG Grant as specified in Section 7-d-i, at which point, upon written notice from the Franchisee to the City, the initial performance bond shall be terminated.
- ii. The initial performance bond shall provide the following conditions:
 - (1) There shall be recoverable by the City from the principal and surety,

any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered or incurred by the City resulting from the failure of the Franchisee to faithfully complete the Initial System Upgrade or deliver the PEG Grant or both. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

- (2) The total amount of the initial performance bond shall be forfeited in favor of the City in the event the Franchisee abandons the Initial System Upgrade prior to completion.

- iii. The initial performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City; and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until thirty (30) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

b. *Security Fund:*

- i. The Franchisee, upon execution of this Agreement, shall establish with the City a Security Fund in the amount of Two Hundred Fifty Thousand Dollars (\$250,000): a letter of credit in the amount of Fifty Thousand Dollars (\$50,000) which shall be delivered to the City Clerk on or before the effective date of this Agreement; and the balance of Two Hundred Thousand Dollars (\$200,000) shall be in the form of a permanent performance bond.
- ii. The Security Fund shall serve as security for:
 - (1) the faithful performance by the Franchisee of all material provisions of this Agreement;
 - (2) any damage or loss occasioned by the Franchisee's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the City Clerk issued pursuant to this Agreement;
 - (3) the payment by the Franchisee of all liens and taxes, all damage, claims, costs or expenses which the City has been compelled to pay

or incur by reason of any act or default of the Franchisee, and all other payments due the City from the Franchisee pursuant to this Agreement;

- (4) the loss of any payments required to be made by the Franchisee to the City which would have been received by the City but for the Franchisee's failure to perform its obligations pursuant to this Agreement, during the period of time between the Franchisee's failure to perform and the date on which the City takes over, or authorizes any other Person to take over, the construction, operation, or maintenance of the System necessitated by such failure; and
- (5) any other documented costs incurred by the City which are necessitated by such failures listed above.
- (6) The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Franchisee to the City but only to the extent of said withdrawal.

iii. Throughout the term of this Agreement, the Franchisee shall maintain the Security Fund in the amount specified in subsection b-i hereof, or such other amount as may from time to time be agreed to by the City and the Franchisee. Within thirty (30) days after receipt of notice from the City Clerk that any amount has been withdrawn from the Security Fund, the Franchisee shall restore the letter of credit portion of the Security Fund to the amount specified in subsection b-i hereof, provided that said restoration obligation for such withdrawal shall be suspended during the period of any judicial challenge by the Franchisee to the propriety of such withdrawal from the Security Fund, and provided further that if it is determined that said withdrawal by the City was improper, the City shall restore the improperly withdrawn amount to the Security Fund.

c. *Withdrawals from the Security Fund:*

- i. If the Franchisee fails: (i) to make any payment required by this Agreement within the time fixed herein; (ii) to pay to the City, within ten (10) business days after receipt of notice, any taxes or liens due and unpaid; (iii) to pay to

the City, within ten (10) business days after receipt of notice from the City Clerk, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of the Franchisee; or (iv) to comply, within thirty (30) days after receipt of notice from the City Clerk, with any provision of this Agreement which the City Clerk determines can be remedied by an expenditure of an amount in the Security Fund; then the City Clerk may withdraw the amount thereof from the Security Fund by delivering a letter to the letter of credit bank requesting payment to the City. Prior to each such withdrawal, the Franchisee shall be afforded an opportunity to cure any of said failures or present written comments contesting the validity of the withdrawal within ten (10) days after notice from the City Clerk that the withdrawal is to be made.

- ii. In addition to the withdrawals authorized above, the City Clerk may withdraw from the Security Fund e.g., the letter of credit, and pay to the City the amounts specified in this Section for any of the following failures by the Franchisee to comply with the provisions of this Agreement, provided that such failures are not cured by the Franchisee to the satisfaction of the City Clerk within a reasonable time after receipt of notice by the Franchisee from the City Clerk. (Notice shall specify reasonable time in which failure is to be corrected):

- (1) Failure to complete the Initial System Upgrade and activation of the new services in accordance with the timetables set forth in "Section 5, CONSTRUCTION AND MAINTENANCE" of this Agreement; up to Seven Thousand Five Hundred Dollars (\$7,500) per month, for each month or part thereof that such delay continues, but in no event more than Forty-five Thousand Dollars (\$45,000) during each year;
- (2) Failure to furnish, maintain, and continue to offer service to any Person within the City upon the order of the City Clerk, as provided in "Section 4, PROVISION OF CABLE SERVICE" hereof: Five Hundred Dollars (\$500) per day for each day or part thereof that such failure continues;

- (3) Failure to provide services in accordance with "Section 7, CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") USE" above: Fifty Dollars (\$50) per day for each day or part thereof that such failure continues;
 - (4) Willful and unjustified refusal to provide the City with any books, records or other documents required to be provided by this Agreement: One Hundred Dollars (\$100) per day for each day or part thereof that such failure continues;
 - (5) Failure to test, analyze and to report on the performance of the system following a request pursuant to Section 5 herein or Section 99-13 of the Cable Ordinance: One hundred Dollars (\$100) per week or part thereof that such non-compliance continues;
 - (6) Failure of the Franchisee to comply with Cable Ordinance design or operating standards within forty-five (45) days following the adoption of a resolution by the Council indicating such failure: One Hundred Dollars (\$100) per day or part thereof the deficiency continues;
 - (7) Failure to comply with the provisions of Section 99-12 of the Cable Ordinance: One Hundred Dollars (\$100) per day that such non-compliance continues as reasonably determined by the City Clerk.
- iii. Franchisee agrees that the foregoing amounts are liquidated damages to be paid to the City for failure to comply with those time and performance requirements set forth above and are not in the nature of a penalty.
 - iv. Within one (1) week after each of the foregoing withdrawals, the City Clerk shall notify the Franchisee of the date and amount thereof.
 - v. Any withdrawal from the Security Fund for an amount in excess of Ten Thousand Dollars (\$10,000) with respect to any single event shall be made by the City Clerk only upon resolution adopted by the Common Council.
 - vi. For withdrawals of less than \$10,000, the City Clerk, prior to making such withdrawal, shall notify the Franchisee in writing of his intent to withdraw the funds; give the Franchisee a reasonable period of time specified in the notice, but not less than thirty (30) days, to comply with the specified failure

or omission; and, if requested by the Franchisee, allow the Franchisee to request a hearing before the City Attorney, or designee, on whether the alleged failure or omission had in fact occurred.

- vii. In the event that the City elects to terminate this Agreement for cause as a consequence of any act, or pattern of acts, by the Franchisee for which withdrawals may be made from the Security Fund pursuant to this section, then, as of the date upon which the City adopts a resolution so terminating this Agreement, the City Clerk may no longer make any such withdrawals as a consequence of said act or pattern of acts; provided that this shall in no way be deemed to relieve the Franchisee of its obligation to compensate the City for any loss or damage occasioned by said act or pattern of acts prior to said date of termination. If the Franchisee successfully challenges in court the propriety of said termination, as of the date upon which said termination is declared invalid or otherwise vacated, the City Clerk may again commence making withdrawals from the Security Fund as a consequence of the aforementioned act or pattern of acts, unless it is determined by the court in connection with said challenge that the previous withdrawals were improper.

- d. *Material Breach:* In the event the Franchisee fails to comply with a material provision of this Agreement, then, in accordance with the procedures set forth below, the City may either:

- i. Seek to amend any provision of this Agreement; or
- ii. Seek money damages from the Franchisee as compensation for said material breach; or
- iii. In the event that the Franchisee does not consent to any or all of the foregoing amendments as may be specified by the City, or the City does not elect to seek money damages from the Franchisee or the Franchisee does not agree to pay such damages as the City may seek, then the City may elect to revoke the Franchise granted pursuant to this Agreement by termination of this Agreement; provided that a resolution of the City revoking the Franchise granted herein by termination of this Agreement shall not take effect for a period of one hundred twenty (120) days after it is adopted if the

Franchisee advises the City in writing that it shall seek during said period to find a purchaser for the System, which purchaser shall be subject to the approval of the City, which approval shall not be unreasonable withheld.

- iv. The Franchisee agrees that a failure to comply with a material provision of this Agreement shall include any of the following acts or failures to act by the Franchisee or any officer, agent or employee of the Franchisee, or any of the following events, unless excused by the City:
- (1) substantial failure to satisfy the requirements regarding System characteristics or to meet the technical performance standards and testing requirements, as provided in "Section 6, SYSTEM FACILITIES, EQUIPMENT AND SERVICES" of this Agreement;
 - (2) substantial failure to comply with the requirements of "Section 6-c, INITIAL SYSTEM UPGRADE" of this Agreement; provided that said failure shall not arise in the event of a delay of less than one hundred eighty (180) days in meeting the schedule for construction and delivery of new services;
 - (3) substantial failure to provide Cable Service to any Person within the City who requests it, as provided in "Section 4, PROVISION OF CABLE SERVICE" of this Agreement;
 - (4) abandonment of the whole or a substantial part of the System without the prior written consent of the City;
 - (5) substantial and repeated failure to supply the public and educational Access Channels and related facilities and resources as provided in "Section 7, "CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") USE," of this Agreement or in any separate purchase-of-services agreement between Franchisee and City-designated Access Manager within one hundred twenty (120) days after the date by which said items must be supplied;
 - (6) substantial failure to supply the municipal channels, or the subscriber network and related services, and other support as provided in

"Section 7, "CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") USE" of this Agreement;

- (7) substantial failure to comply with "Section 99-12-12, RIGHTS OF INDIVIDUALS" of the Cable Ordinance for an unreasonable period of time;
- (8) substantial failure to make any of the compensation payments, including but not limited to Franchise Fees and accompanying reports, as provided in "Section 3, FRANCHISE FEES" hereof and the Cable Ordinance, or to maintain the Security Fund in the amount as required by Section 9-b of this Agreement;
- (9) substantial failure to comply with the rules, regulations, orders, or other directives of the City Clerk or the City issued pursuant to this Agreement and the Cable Ordinance;
- (10) the taking of any material action which requires the approval or consent of the City Clerk or the City without having first obtained said approval or consent;
- (11) failure to furnish and maintain, throughout the term of this Agreement, the liability insurance policy or policies and bonds, as provided by "Section 8, INSURANCE, SURETY AND INDEMNIFICATION" hereof;
- (12) to engage in a course of conduct intentionally designed to practice any fraud or deceit upon the City;
- (13) any material misrepresentation, either oral or written, intentionally made by or on behalf of the Franchisee in connection with the negotiation or renegotiation of, or any amendment, renewal, transfer or other modification to, this Agreement;
- (14) the conviction of the Franchisee, any person holding a controlling interest in the Franchisee, any director or officer of the Franchisee or of any controlling person, or any employee or agent of the Franchisee or of any controlling person acting under the express direction or with the actual consent of any of the foregoing of any criminal offense,

including, without limitation, bribery or fraud, arising out of or in connection with (i) this Agreement to construct, operate or maintain a Cable System in the City, (ii) the award of the Franchise granted pursuant to this Agreement, or (iii) any act to be taken following the effective date of this Agreement by the City, its officers, employees or agents relating to or pursuant to this Agreement; provided that the right to terminate this Agreement in the event of said convictions shall arise only with respect to any of the foregoing convictions of the Franchisee itself and, in the event of the conviction of any of the other persons specified in this subsection, the City shall have the right to order the Franchisee to disassociate itself from or terminate the employment of, said other persons with respect to activities in the City or any other activities affecting the System pursuant to this Agreement.

- (15) any false entry knowingly made in the books of account or records of the Franchisee or any false statement knowingly made in any report or otherwise to the City or otherwise by the Franchisee, any director, officer, or other person holding a controlling interest in the Franchisee, or any employee or agent of the Franchisee acting under the express direction or with the actual consent of any of the foregoing;
- (16) substantial refusal, failure, or neglect of Franchisee to file reports pursuant to this Agreement and the Cable Ordinance; or
- (17) substantial failure of the Franchisee to comply with "Chapter 99-8, DESIGN AND CONSTRUCTION PROVISIONS" of the Cable Ordinance.
- (18) Substantial failure to comply with the provisions of "Chapter 99-12, CONSUMER PROTECTION" of the Cable Ordinance.

v. The City shall exercise the rights provided in "Section 9-d, MATERIAL BREACH" hereof in accordance with the following procedures:

- (1) The City Clerk shall notify the Franchisee, in writing, of an alleged

failure to comply with a material provision of this Agreement which notice shall specify the alleged failure with reasonable particularity. The Franchisee shall, within thirty (30) days after receipt of said notice, or such longer period of time as the City Clerk may specify in said notice, either cure such alleged failure or present facts and arguments in refutation or excuse of such failure.

- (2) The City Clerk shall investigate (i) whether a failure to comply with a material provision has occurred; (ii) whether said failure is excusable; and (iii) whether said failure has been cured or will be cured by the Franchisee.
- (3) If the City Clerk determines that a failure to comply with a material provision has occurred and that either said failure is not excusable or has not been or will not be cured by the Franchisee, then the City Clerk shall give written notice of the material breach to the Franchisee.
- (4) If a Franchisee fails to cure such breach within thirty (30) days after the giving of such notice (or if such breach is of such a character as to require more than thirty (30) days within which to cure the same, and a Franchisee fails to commence to cure the same within said thirty (30) day period and thereafter fails to use reasonable diligence, in City Clerk's sole opinion, to cure such default as soon as possible), then, and in any event, such breach shall be a material breach and the City Clerk may elect to recommend termination of the Franchise to the Common Council and, along with such recommendation, shall deliver to the Common Council a written report detailing the reasons why the Franchisee is in material breach and recommending what action should be taken by the Common Council. If the Common Council decides, based upon the City Clerk's report, that there is cause or reason to terminate the Franchise, the following procedure shall be followed:
 - (a) The City Clerk shall provide the Franchisee with a written

notice of the reason or cause for proposed termination and shall allow the Franchisee a minimum of thirty (30) days subsequent to receipt of the notice in which to correct the default.

- (b) The Franchisee shall be provided with an opportunity to be heard at a public hearing prior to any decision by the Common Council to terminate the Franchise.
- (c) If, after notice is given and an opportunity to cure, at the Franchisee's option, a public hearing is held, and the Common Council, by resolution, determines that there was a material breach of the Franchise Agreement by the Franchisee, the Common Council may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the Common Council may fix, such period may not be less than thirty (30) days provided no opportunity for compliance need be granted for fraud or misrepresentation.

- e. *Termination for Convenience.* If within thirty days after the execution date of this Franchise Agreement, the Franchisee fails to deliver the PEG Grant referenced in Section 7-d-i, then the City Clerk may terminate this Franchise Agreement for the City's convenience by written notice from the City Clerk delivered to the Franchisee in which case Franchisee will retain any and all rights under the Prior Franchise and applicable State and Federal law, including any and all rights under Section 626 of the Cable Act. The City will extinguish its right under this provision by delivering written notice from the City Clerk to the Franchise upon receipt of the aforementioned payment.

10. EQUAL OPPORTUNITY POLICY AND DISADVANTAGED BUSINESS ENTERPRISE INVOLVEMENT.

- a. The City acknowledges that, by voluntarily offering the following policies and programs, the Franchisee will be in full compliance with Section 99-5-14, Ordinance:
 - i. *Equal Opportunity Policy.* Franchisee shall meet all Federal requirements

relative to equal opportunity hiring. Franchisee shall also maintain an affirmative action plan.

ii. *Disadvantaged Business Enterprise (DBE) Program and Policy.* For the purposes of this Agreement Franchisee's requirements will be limited to the following programs:

- (1) *Disadvantaged Business Enterprise (DBE) Participation.* Franchisee shall establish a plan for Disadvantaged Business Enterprises ("DBE"), as DBE is defined in Section 360-01-9, Ordinances, with a spending goal of 18% per year, on a good faith, reasonable efforts basis, to be applied against Franchisee's discretionary spending, as mutually agreed to by the Franchisee and the City Clerk, for year one of the Franchise and for the remaining years thereafter.
- (2) *Disadvantaged Business Enterprise Business Loan Program.* Franchisee shall, within ninety (90) days of the execution of the Franchise Agreement, establish and maintain a Loan Program with lending capacity of \$200,000 by cash grant or credit facility through participating banks or other loan program administrators ("Participating Lenders") as set forth hereafter. The parties recognize, subject to the provisions herein, that \$120,000 represented by either a cash grant or a credit facility, is already on deposit with certain participating banks.
 - (a) The Franchisee may administer the Business Loan Program through one or more Participating Lenders with offices in the City.
 - (b) Loans shall be made available to qualified borrowers certified as DBEs under the Joint Certification Program operated by the City, the County and the Milwaukee Metropolitan Sewerage District.
 - (c) The Franchisee and the Participating Lenders shall establish and publish loan procedures, including eligibility, interest rate criteria, repayment schedules, and participation by other local

financial institutions.

- (d) Such loans, when repaid, will be placed in the Business Loan Program together with any interest earned thereon. Loans may be made in any amount provided, however, that the Participating Lender shall have verified the application therefor and deemed the business plan to be reasonable and appropriate, and that such loan is consistent with and in the best interest of the borrower, given the business plan presented.

(3) *Local Annual Scholarship Program Fund.*

- (a) Franchisee shall establish a scholarship fund that will provide college scholarships to students who are residents of the City of Milwaukee. Scholarships will be provided to assist eligible undergraduate students pursuing courses of study related to the field of Journalism and Mass Communication at accredited institutions who demonstrate (a) academic qualifications as established by Franchisee's scholarship screening committee and (b) a lack of the necessary funds to pursue such schooling. The Franchisee shall make available a total of Five Hundred Forty Five Thousand Dollars (\$545,000) over the life of the Franchise to be allocated for the purposes of funding scholarships as follows:
 - (i) Years 1-5 \$20,000 per year
 - (ii) Years 6-10 \$31,000 per year
 - (iii) Years 11-15 \$40,000 per year
 - (iv) Years 16-17 \$45,000 per year
- (b) Franchisee shall, by public notice and with the aid of various local organizations and the use of the Cable System, seek applications and resumes of interested and qualified students who are residents of the City of Milwaukee for such scholarships. The amount of an annual scholarship may vary

depending on the need and qualification of the applicant, and may be either a full or a partial scholarship as determined by Franchisee or its designee.

- (c) Unused scholarship funds in any given Franchise year shall be held in the fund and accumulated with the immediately succeeding year's contribution.
- b. Franchisee's obligations under this Section are made voluntarily and Franchisee agrees that the amount of all payments for grants, loans and scholarships incurred under this Section shall not be credited against Franchisee's Franchise Fee obligations to the City.
- c. At expiration of the Franchise Agreement, assets in the Business Loan Program shall remain the property of the Franchisee.

11. MISCELLANEOUS PROVISIONS.

- a. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, however designated, and the promises and obligations herein shall survive the expiration date hereof.
- b. *Severability:*
 - i. If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.
 - ii. In the event of a Franchise adjustment under subsection b-i, and upon application of either the City or the Franchisee, the parties shall thereafter meet in order to negotiate a new Franchise term, condition or provision which falls within the judicial, administrative and/or legislative parameters.
 - iii. Unless the parties agree otherwise as provided in subsections b-i and b-ii, and in the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City.
- c. *Preemption:* In the event that federal or state laws, rules or regulations preempt a

provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

- d. *Compliance With Federal, State and Local Laws:* The Franchisee shall comply with all applicable federal, state, and local laws and regulations.
- e. *Franchise Processing Costs:* The Franchisee and the City agree that those franchise processing costs, so defined under federal law as under the 5% of total gross revenue cap, shall be considered as an element of Franchise Fees. With respect to any transfer of the Franchise, the Franchisee will not be responsible, under the terms of this Franchise, to reimburse the City in connection with such transfer for fees for consultants and outside attorneys retained by the City.
- f. *Records Required:* The Franchisee shall maintain records as necessary to comply with the terms and conditions of this Franchise and the Cable Ordinance and shall make such records available for review by the City upon request.
- g. *Force Majeure:* The Franchisee shall not be deemed in default of provisions of this Agreement or the Cable Ordinance where performance was rendered impossible by reason of strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State or any of their respective departments, agencies, political subdivisions, however designated, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the Franchisee. If the Franchisee is unable in whole or in part to carry out its obligations hereunder, Franchisee shall not be deemed to be in violation or default during the continuance of such inability.
- h. *Governing Law:* This Franchise Agreement shall be governed in all respects by the

law of the State of Wisconsin.

- i. *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addresses below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

- i. Notices to the Franchisee shall be mailed to:

Time Warner Cable
Division President
1610 North Second Street
Milwaukee, WI 53212

- ii. Notices to the City shall be mailed to:

City Clerk
Office of the City Clerk
City of Milwaukee
200 East Wells Street
Milwaukee, WI 53202

- iii. The Franchisee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Franchisee and whose acts will be considered to bind the Franchisee.

- 12. **TIME OF ESSENCE.** In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. As a result, the Franchisee's failure to complete construction, to extend service, to seek approval of transfers or to provide information in a timely manner may constitute material breaches.

- 13. **CAPTIONS AND REFERENCES.**

- a. The captions and headings of Sections throughout this Agreement are intended solely to facilitate reading and reference to the Sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.
 - b. When any provision of the Cable Ordinance is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the

Cable Ordinance or City law that may also govern the particular matter in question.

14. RESERVATION OF RIGHTS. The parties expressly reserve all rights they may now or hereafter have under local, state and federal law including the Cable Communications Policy Act of 1984 as amended.
15. ENTIRE AGREEMENT. This Agreement supersedes all oral statements and prior drafts.
16. TRANSFER AND GUARANTY. Notwithstanding any provision in Chapter 99, Ordinances, to the contrary:
 - a. The City hereby approves the transfer of this Franchise Agreement to Time Warner Cable of Southeastern Wisconsin, L.P., based upon the following guaranty.
 - b. All performance of the Franchisee in accordance with the terms of the Franchise Agreement, has been guaranteed by Time Warner Entertainment Company, L.P., including the above transfer. (See Exhibit C)
 - c. The City and the Franchisee further agree with respect to any future transfer of the Franchise to Time Warner Entertainment Company, L.P. ("TWE"), or to an affiliate of Franchisee:
 - i. The City shall consider waiver of the requirement for City approval (transfer provisions) contained in § 99-4-5, Ordinance, provided that TWE guarantees the performance of the transferee.
 - ii. Within thirty (30) days of receipt of a notice to the City Clerk from the Franchisee of a waiver request as specified above, the City Clerk shall advise Franchisee if the City Clerk will recommend to the City a waiver of the requirement for City approval.
 - iii. The City shall act on the City Clerk's recommendation for a waiver request as specified above within thirty (30) days after recommendation is made by the City Clerk, unless a file cannot be introduced to the Common Council and acted upon within thirty (30) days because the Common Council is in its

annual recess, in which case the Common Council shall act upon the recommendation within thirty (30) days after it has reconvened from such recess.

iv. If City approval of the transfer is required (either due to the City Clerk's non-recommendation of waiver under subsection c-ii or the Common Council's disapproval of a waiver under subsection c-iii), then the Franchisee shall file with the City Clerk the following information.

- (1) If a transfer is made to Franchisee's parent, the following information:
 - (a) The transferee's Form 10K most recently filed with the U.S. Securities and Exchange Commission;
 - (b) Copies of any documents filed with the Federal Communications Commission in connection with such transfer;
 - (c) Such other information as Franchisee reasonably believes will be necessary for the City to make an informed judgment; or
- (2) If a transfer is to an affiliate of Franchisee, the following information:
 - (a) Name and mail and facsimile address of the affiliate;
 - (b) Identification of the ownership and control of the affiliate;
 - (c) A list of all officers and directors of the affiliate, identifying those who are common to both the transferee and the transferor;
 - (d) A discussion of how the affiliates' plans to utilize existing personnel to manage and operate the Cable System;
 - (e) A demonstration that the affiliate is a legal entity registered to do business in the State of Wisconsin;

- (f) Financial statements, the most recent two years, to the extent they are available, or a five year financial pro-forma, or other disclosures which demonstrate the applicant's financial ability to operate the system in compliance with the Franchise Agreement;
 - (g) A representation that the affiliate shall not have had a cable franchise agreement validly revoked for non-compliance in the last five (5) calendar years; and
 - (h) A statement by a corporate officer of the affiliate that the affiliate accepts the terms and conditions of Chapter 99, MCO, and the Franchise Agreement subject to applicable state and federal laws.
- v. The City may, upon request of the Franchisee, waive any or all of the filing requirements set forth in paragraphs iv.a. and iv.b. above for good cause shown.
- vi. In considering any request from the Franchisee under this subsection c, the City shall act expeditiously and shall not unreasonably withhold its approval.
- vii. If the City does not take final action within sixty (60) days of the filing of information under subsections c-iv-a or c-iv-b, then the City shall be deemed to have approved the transfer.
- d. With respect to any transfer by Franchisee other than as set forth in (i) above, § 99-4-2-d-11, Ordinances, and any other comparable subparagraph in § 99-4, Ordinances, shall be read to mean and include the phrase "... or any other evidence of financial qualifications satisfactory to the City;" and
- e. With respect to any other transfer by Franchisee other than as provided above, § 99-4-5-b-2-h, Ordinances, shall be read to mean and include "... a certificate in the usual form and in the ordinary course of business by a corporate officer, after having

undertaken a due diligence review of the system's performance, certifying to the best of his/her knowledge that the Franchisee is in compliance with each and every obligation under the Franchise or, in the alternative, a specification of any non-compliance."

17. **INTERCONNECTION.** The provisions of Section 99-8-10, Ordinances, shall apply to Franchisee subject to the following conditions:

- a. If a municipality adjacent to the City or a company providing cable service to such a municipality desires to obtain access programming from the City or its Access Manager, the Franchisee must provide the necessary services and equipment to interconnect the City's Cable System and the system of the adjacent municipality only if the adjacent municipality and/or the company providing cable service to that municipality have agreed with the City and/or the Franchisee to pay all reasonable and necessary costs attributable to that interconnection.
- b. If the City desires to obtain access programming from a company providing access services to an adjacent municipality, the Franchisee must provide the necessary services and equipment to interconnect the City's Cable System and the system of the adjacent municipality only if the City has agreed to pay all reasonable and necessary costs attributable to that interconnection.
- c. Except as provided in subsections a and b above, the Franchisee, at its own expense shall, to the degree technically feasible, interconnect the signal transport of its Cable System serving the City with cable systems owned and controlled by it or an affiliate serving adjacent municipalities. Activation shall not be required until the Franchisee has completed scheduled system upgrades in the adjacent municipalities, but in no event later than December 31, 2000.

18. **INCORPORATION OF EXHIBITS.** The following exhibits to this Agreement, attached hereto, and all portions thereof, are incorporated herein by reference and expressly made a part of this Franchise Agreement:

- a. Exhibit A: Map of Hard-To-Construct Area

b. Exhibit B: Identification of Remote Points of Origination Provided during the Prior Franchise

c. Exhibit C: TWE Guaranty of Franchisee Performance

Executed at Milwaukee, Wisconsin this ____ day of _____, 1999.

As to the City of Milwaukee

By: _____
John O. Norquist
Mayor

Attest:

By: _____
Ronald D. Leonhardt
City Clerk

Countersigned:

By: _____
W. Martin Morics
Comptroller

As to Franchisee:
Time Warner Cable of Southeastern Wisconsin, L.P.

By: _____
Thomas Sharrard
President

Attest:

By: _____
Secretary

Approved as to content this ____ day of _____, 1999

Grant Langley
City Attorney

By: _____
Patrick B. McDonnell
Special Deputy City Attorney

Approved as to execution this ____ day of _____, 1999

Grant Langley
City Attorney

By: _____
Patrick B. McDonnell
Special Deputy City Attorney

EXHIBIT A

MAP OF HARD-TO-CONSTRUCT AREA



EXHIBIT B

**IDENTIFICATION OF REMOTE POINTS OF ORIGINATION
PROVIDED DURING THE PRIOR FRANCHISE**

EXHIBIT B

REMOTE POINTS OF ORIGATION PROVIDED IN THE CITY OF MILWAUKEE DURING THE TERM OF THE PRIOR FRANCHISE

1. Milwaukee County Courthouse
901 North Ninth Street
2. Milwaukee County Courthouse Annex
907 North Tenth Street
3. Milwaukee County Criminal Justice Facility
949 North Ninth Street
4. City of Milwaukee Safety Building
821 West State Street
5. City of Milwaukee Police Administration Building and Municipal Court
749 West State Street
6. Milwaukee Public Library
814 West Wisconsin Avenue
7. Milwaukee Fire Department Headquarters
711 West Wells Street
8. Midwest Express Center
400 West Wisconsin Avenue
9. Milwaukee City Hall
200 East Wisconsin Avenue
10. Frank B. Zeidler Municipal Building
841 North Broadway
11. Department of City Development/Fire and Police Commission Building
809 North Broadway
12. Pabst Theater
144 East Wells Street
13. Milwaukee Public Schools Administration Building
5225 West Vliet Street

EXHIBIT C

TWE GUARANTY OF FRANCHISEE PERFORMANCE

GUARANTY

THIS GUARANTY is made and entered into on the ____ day of December, 1999 by and between Time Warner Entertainment Company, L.P. ("Guarantor") on behalf of itself, and the City of Milwaukee ("City").

WHEREAS, Guarantor is predecessor in interest of Time Warner Cable of Southeastern Wisconsin, L.P. ("Franchisee").

WHEREAS, the City has renewed its cable Franchise Agreement with the Franchisee to construct, install, maintain and operate a cable television system in the City; and

WHEREAS, based upon Franchisee's representations and information, and in response to its request for renewal, the Common Council has determined, subject to the provisions of Chapter 99, Milwaukee Code of Ordinances, and the terms and conditions set forth therein, the grant of a non-exclusive Franchise to Franchisee, to supersede the prior franchise, is consistent with and in the public interest; and

WHEREAS, the Guarantor has or will transfer all rights in such Franchise to Franchisee at or about the time of the execution of the Franchise Agreement and related documents. The Guarantor herein, to induce the City to enter into the Franchise Agreement with the Franchisee, and for the good and valuable consideration expressed herein, the receipt of which is hereby acknowledged, will guarantee absolutely, irrevocably and unconditionally, the complete and prompt observance, fulfillment and performance by the Franchisee in lieu of a procedure under the transfer provisions of Section 99-4-5, Ordinances; and

WHEREAS, the City and Franchisee have now reached agreement on all terms and conditions of the Franchise, and the City and Guarantor have reached agreement on the terms and conditions of this Guaranty;

NOW THEREFORE, in addition to the good and valuable consideration recited above, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby agrees as follows:

1. Irrevocable Guaranty. The Guarantor, on behalf of itself guarantees absolutely, irrevocably and unconditionally to the City the complete and prompt observance, fulfillment and performance, by Franchisee of each and every provision and

obligation contained in the Franchise, except to the extent that any such provision or obligation is unenforceable under applicable law.

2. Effective Date. The Guaranty set forth in Section 1 above, shall be effective upon the acceptance of the Franchise by the Franchisee. The Guaranty shall be null and void if and when the City consents to the transfer of the Franchise to any entity unaffiliated with the Guarantor.
3. Modification. No termination, amendment, waiver or modification of this Guaranty or any of its terms or provisions shall be effective unless it is set forth in a written instrument signed by the Guarantor and the City.
4. Applicable Law. This Guaranty shall be governed and construed in accordance with the laws of the State of Wisconsin, as applicable to contracts entered into and to be performed entirely within the State of Wisconsin.
5. Provisions Separable. If any one or more of the covenants, agreements or provisions of this Guaranty shall be held to be contrary to any express provision of law or contrary to any policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid or unenforceable, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Guaranty.
6. Notice of Exercise. The City may invoke the provisions of this Guaranty by delivery of a ten (10) day written notice to the Guarantor.
7. Notices. Unless otherwise expressly stated herein, notices required under the Franchise Agreement or this Guaranty shall be mailed first class, postage prepaid, to the addresses below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

- (a) Notices to the Guarantor shall be mailed to:

Time Warner Entertainment Company, L.P.
290 Harbor Drive
Stamford, CT 06902-6732
Attention: General Counsel

- (b) Notices to the Franchisee shall be mailed to:

Time Warner Cable of Southeastern Wisconsin, L.P.
1610 North Second Street
Milwaukee, WI 53212
Attention: Division President

- (c) Notices to the City shall be mailed to:

Office of the City Clerk
City of Milwaukee
Room 205 - City Hall
200 East Wells Street
Milwaukee, WI 53202

The Guarantor shall, at all times, keep the City advised as to which individual(s) are authorized to act on behalf of the Guarantor and whose act shall be considered to bind the Guarantor.

8. Entire Agreement. This Guaranty supersedes all oral statements and prior drafts.
9. Binding Acceptance. This Guaranty shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, however designated, and the promises and obligations herein shall survive the expiration date hereof.

IN WITNESS WHEREOF, the Guarantor on behalf of itself has caused this Guaranty to be executed under seal by its duly authorized representative on the date first above written.

As to Guarantor:

TIME WARNER ENTERTAINMENT COMPANY, L.P.

By: _____
Thomas Sharrard
Division President

ACCEPTED and agreed to this ____ day of December, 1999

As to City of Milwaukee:

By: _____
John O. Norquist
Mayor

Attest:

By: _____
Ronald D. Leonhardt
City Clerk

Countersigned:

By: _____
W. Martin Morics
Comptroller

APPROVED as to content this ____ day of December, 1999

Grant Langley
City Attorney

By: _____
Patrick B. McDonnell
Special Deputy City Attorney

Approved as to execution this _____ day of December, 1999.

Grant Langley
City Attorney

By: _____
Patrick B. McDonnell
Special Deputy City Attorney